



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 6, 2004

Ms. Susan C. Rocha
Denton, Navarro, Rocha & Bernal
2517 North Main Avenue
San Antonio, Texas 78212

OR2004-0915

Dear Ms. Rocha:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 195690.

The San Antonio Water System ("SAWS"), which you represent, received a request for "all responses to [a particular] RFQ, all respondent's grading sheets (showing all scores in the various selection criteria categories), all memos, etc." You claim that the requested information is excepted from disclosure under sections 552.104 and 552.110 of the Government Code. In addition, pursuant to section 552.305 of the Government Code, you notified seventeen interested third parties of the request and of their opportunity to submit comments to this office.¹ See Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure in certain circumstances). We have considered all claimed exceptions and reviewed the submitted information.

Initially, we note that you have submitted only the proposals for our review. As you have not submitted any of the other requested information, we assume SAWS has released such

¹Your brief to this office reflects that you notified the following third parties: Austin Commercial; The Austin Company; Bartlett Cocke, L.P.; Constructors & Associates, Inc.; FaulknerUSA; Koontz McCombs Construction, Ltd.; Lyda Builders, Inc.; Marmon Mok, LLP; MW Builders of Texas, Inc.; Overland Partners; Rector Management; Rehler Vaughn & Koone, Inc; Ryan Companies US, Inc.; SpawGlass Contractors, Inc; Yates Construction; Zachry Construction Corporation; and 3D/International. We have received arguments from or on behalf of Austin Commercial; Bartlett Cocke, L.P.; Constructors & Associates, Inc.; FaulknerUSA; Lyda Builders, Inc.; MW Builders of Texas, Inc.; and Zachry Construction Corporation.

information to the extent that it existed on the date SAWS received this request. If SAWS has not released any such records, it must do so at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

We turn now to your arguments regarding the submitted information. Section 552.104 states that information is excepted from required public disclosure if release of the information would give advantage to a competitor or bidder. The purpose of this exception is to protect the interests of a governmental body, usually in competitive bidding situations. *See* Open Records Decision No. 592 (1991). This exception protects information from public disclosure if the governmental body demonstrates potential harm to its interests in a particular competitive situation. *See* Open Records Decision No. 463 (1987). Generally, section 552.104 does not except bids from public disclosure after bidding is completed and a contract is in effect. *See, e.g.,* Open Records Decision Nos. 541 (1990), 514 (1988), 306 (1982), 184 (1978), 75 (1975).

In this case, you indicate that SAWS is still negotiating the contract with the winning bidder and inform us that a contract has not been approved or signed yet. Based on your representations and our review of the information at issue, we conclude that the submitted information may be withheld under section 552.104. Because our decision under section 552.104 is dispositive, we need not consider your remaining arguments or those submitted by or on behalf of the third parties.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental

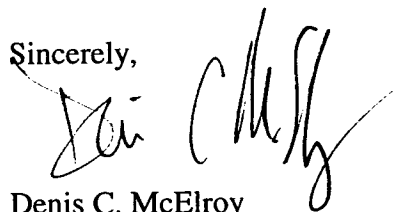
body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.-Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Denis C. McElroy
Assistant Attorney General
Open Records Division

DCM/lmt

Ref: ID# 195690

Enc. Submitted documents

c: Mr. Paul Lembke
The Opus Group
15455 N Dallas Pkwy, Ste 450
Addison, Texas 75001
(w/o enclosures)

Mr. William McAdoo
Austin Commercial
1501 South Mopac Expressway, Ste 210
Austin, Texas 78746
(w/o enclosures)

Mr. Richard C. McSwain
Counsel for Bartlett Cocke, L.P.
Curry, McSwain & Associates,
P.C.
Renaissance Plaza, Suite 185
70 NE Loop 410
San Antonio, Texas 78216
(w/o enclosures)

Bollie Bollenbach
FaulknerUSA
1700 Rio Grande
Austin, Texas 78701
(w/o enclosures)

Mr. Steve Zander
Zachry Construction Corporation
P.O. Box 240130
San Antonio, Texas 78224
(w/o enclosures)

Mr. Gerald Turman
Koontz McCombs Construction,
Ltd.
755 E. Mulberry, Suite 100
San Antonio, Texas 78212
(w/o enclosures)

Mr. Madison A. Smith
Overland Partners
5101 Broadway
San Antonio, Texas 78209
(w/o enclosures)

Mr. David Bomersbach
Rehler Vaughn & Koone, Inc.
745 E. Mulberry, Suite 601
San Antonio, Texas 78212-3186
(w/o enclosures)

Mr. John K. Milligan
SpawGlass Contractors, Inc.
9331 Corporate Drive
Selma, Texas 78154
(w/o enclosures)

Mr. Mark Wohlfarth
Constructors & Associates, Inc.
10100 Reunion Place, Suite 120
San Antonio, Texas 78216
(w/o enclosures)

Mr. Todd Winnerman
MW Builders of Texas, Inc.
P.O. Box 220
Temple, Texas 76504-2474
(w/o enclosures)

Mr. Winston Evans
The Austin Company
P.O. Box 66040
Houston, Texas 77266-6040
(w/o enclosures)

Mr. Gregory J. Houston
Marmon Mok, LLP
700 N. St. Mary Street, Suite 1600
San Antonio, Texas 78205
(w/o enclosures)

Mr. Ken Rector
Rector Management
525 Oak Centre
San Antonio, 78258
(w/o enclosures)

Mr. Collin Barr
Ryan Companies US, Inc.
50 South Tenth Street, Suite 300
Minneapolis, Minnesota 55403-2012
(w/o enclosures)

Mr. David Burton
Yates Construction
14607 San Pedro Avenue, Suite 290
San Antonio, Texas 78232
(w/o enclosures)

Mr. Andres Andujar, P.E.
3D/International
219 East Houston Street, Suite 350
San Antonio, Texas 78205
(w/o enclosures)

Mr. Richard C. McSwain
Counsel for Lyda Builders, Inc.
Curry, McSwain & Associates, P.C.
Renaissance Plaza, Suite 185
70 NE Loop 410
San Antonio, Texas 78216
(w/o enclosures)